

intent to own and operate a television station in Reading, Pennsylvania. If Adams were sincere in its proposal to own and operate Channel 51, it would have made certain that it had and maintained the right to use the proposed transmitter site.

- (iv) Adams' carelessness with regard to its corporate status is inconsistent with an intent to own and operate a television station.

248. On November 23, 1993, Adams was incorporated in Massachusetts. [Articles of Organization (Reading Ex. 71); Gilbert Testimony, Tr. 2474:8-10; 2517:8-10] Gilbert, Adams' Secretary and Vice President and a "very skilled lawyer," is and always has been Adams' counsel with the respect to all corporate matters. [Gilbert Testimony, Tr. 1116:3, 2519:20-2520:3] On August 31, 1998, however, Adams was involuntarily dissolved by the Commonwealth of Massachusetts for failing to file Annual Reports. [Certificate of Dissolution (Reading Ex. 72)]

249. Adams' carelessness in failing to comply with the corporate legal requirements necessary to maintain its viability is inconsistent with an intention to operate, as an ongoing business, a television station in Reading, Pennsylvania.

- (v) Adams' lack of a business, operation, or programming plan is inconsistent with an intent to own and operate the television station.

250. Adams' lack of any plan for the business, management, or operations, including programming, for running a television station in the event its application were successful further demonstrates that Adams does not have a serious interest in owning and operating the proposed television station. Thus, prior to filing its application, Adams never prepared a business plan for operation of a station in Reading. [Gilbert Testimony, Tr. 1109:22-24] Adams never discussed any specific requirements for staffing the station. [Gilbert Testimony, Tr. 1107:15-109:2] Nor had Adams, prior to July 1999, investigated the possibility of obtaining a source of programming for the station. [Gilbert Testimony 1107:11-14, 2504:16-2505:8; Swanson Testimony, Tr. 2277:11-2278:6, 2281:2-2282:19; Swanson Notes at 12, 14; Billing Records (Reading Hearing Ex. 50 at 10)] Moreover, it is not at all clear that the Adams principals ever reached an understanding as to what programming Adams would air if it were successful. [Adams' Application (Reading Ex. 10 at 19); Umans Testimony (Reading Ex. 45 at 8:20-11:2); Haag Testimony (Reading Ex. 44 at 18:21-19:2); Gilbert Testimony, Tr. 1125:1-1127:17; Fickinger Testimony, Tr. 2443:16-2444:6, 2445:5-21]

251. This lack of planning is inconsistent with Adams' claim that it intends to spend millions of dollars (initially \$4.5 million, then \$7 million) to

construct and operate the proposed television station. In particular, if Adams was serious about building and operating the station, it would have made certain it had an available source of programming, particularly if it was forced to abandon Channel 44 in Chicago, Illinois, because of concerns about the availability of programming for that station. [Gilbert Decl., ¶¶ 5-6 (Reading Ex. 24)]

- (vi) Adams' motivational fee agreement with Bechtel & Cole is inconsistent with an intent to own and operate the television station.

252. At all times in the preparation of its aborted challenge to Channel 66, Marlborough, Massachusetts, and its present challenge of WTVE, Adams has been represented by Bechtel & Cole ("B&C"). [Gilbert Testimony, Tr. 1018:15-24, 1042:11-1043:20] Adams' fee agreement with B&C provides that B&C attorneys are to be paid at a rate that is \$100 per hour less than their usual hourly rates with respect to the prosecution of Adams' competing application (i.e., \$125/hour versus \$225/hour). [Adams Fee Agreement (Reading Ex. 21); Gilbert Testimony, Tr. 1019:19-22] The fee agreement further provides that B&C attorneys would be paid *twice* their usual hourly rate (i.e., \$450/hour) in the event that Adams' application is granted or settled on terms that are "economically favorable," including a settlement for reimbursement of reasonable and prudent expenses. [Adams Fee Agreement (Reading Ex. 21)]

253. The fact that Adams' fee agreement with B&C even contemplates settlement is, in and of itself, inconsistent with the intention to own and operate the station. The fact that B&C would receive the same bonus (an additional \$325 per hour) if the case settled on "economically favorable" terms (even if Adams was only reimbursed for its "reasonable and prudent expenses"), as it would for a victory, suggests that Adams always viewed a settlement as a positive result. The inescapable inference from this provision is that, after the "highly successful" Monroe case, Adams/Monroe and its attorneys agreed to seek a similar outcome elsewhere and expected that, at worst, Adams/Monroe would break even and the attorneys would be well-compensated.

(vii) Adams' participation in settlement discussions with Telemundo is inconsistent with an intent to own and operate the television station.

254. On April 30, 1999, Anne Swanson, an attorney with the law firm of Dow Lohnes & Albertson in Washington, D.C., on behalf of her client Telemundo, spoke with Harry Cole, counsel for Adams, about the possibility of settling this renewal application proceeding. [Swanson Testimony, Tr. 2215:8-2217:6, 22119:12-2222:13, 2301:16-2302:1; Ms. Swanson's handwritten notes ("Swanson Notes") (Reading Ex. 52 at 4-5)] During their initial conversation, Ms. Swanson asked about Adams' level of interest in settlement Mr. Cole informed her that Gilbert liked to do his own

negotiating. [Swanson Testimony, Tr. 2215:11-17, 2219:3-24; Swanson Notes (Reading Ex. 52 at 4)]

255. Later that day, Swanson again spoke with Cole, at which time he advised her that, while Gilbert planned to pursue the application, *he would not say "no" to settlement.* [Swanson Testimony, Tr. 2219:18-2221:8; Swanson Notes at 5.] Thereafter, Swanson telephoned Gilbert. [Swanson Testimony, Tr. 2219:18-2220:15, 2222:14-2224:18, 2302:2-14; Dow Lohnes & Albertson Telephone Report for April 30, 1999 (Reading Ex. 51 at 2)] During that conversation, Swanson asked Gilbert for a settlement figure and Gilbert responded that he could not give her a figure because Adams had not valued the station. [Swanson Testimony, Tr. 2225:18-2226:9; Swanson Notes (Reading Ex. 52 at 5)] Gilbert then committed Adams to pay one-third of the expense of obtaining an appraisal of Station WTVE. (Swanson Testimony, Tr. 2223:12-2224:18, 2230:17-2231:4; Swanson Notes (Reading Ex. 52 at 5); Letter from Gilbert to Swanson dated April 22, 1999 (Reading Ex. 57)) Gilbert also indicated that Adams would be reasonable with respect to a possible settlement. [Swanson Notes (Reading Ex. 52 at 5)]

256. On June 2, 1999, Swanson received the appraisal. [Swanson Testimony, Tr. 2265:5-2266:8; June 2, 1999, Fax Transmittal Cover Sheet (Reading Ex. 62); the Bond & Pecaro Appraisal (Adams Ex. 75 at 2-23)] The next day, she faxed the appraisal to Mr. Cole along with a letter reconfirming

that Adams had agreed to pay for a third of the cost. [June 3, 1999, Letter from Ms. Swanson to Mr. Cole (Adams Ex. 75)]

257. On June 7, 1999, Gilbert, Cole, Swanson and possibly Ann Gaulke, Telemundo's Vice President of Network Affiliate Relations, participated in a telephone conference to discuss the appraisal and settlement. [Swanson Testimony, Tr. 2268:6-2274:7, Swanson Notes (Reading Ex. 52 at 10-11)] Of particular concern during the June 7 conference was Reading's lack of involvement in the appraisal and settlement negotiations since the process required the participation of all three parties – the two applicants and the “white knight.” [Swanson Testimony, Tr. 2270:18-2272:2]

258. At that time, Gilbert made it clear that he did not want his time wasted and that *Adams was only interested in pursuing serious settlement negotiations*. [Swanson Testimony, Tr. 2273:9-20; Swanson Notes (Reading Ex. 52 at 11)]

259. On July 16, 1999, Swanson spoke with Cole and with Ms. Gaulke about “Adams’ interest in affiliation and settlement.” [Billing Records (Reading Hearing Ex. 50 at 10)] Later that day, Swanson revisited the settlement issue with Adams. [Swanson Testimony, Tr. 2284:10-2285:5; Swanson Daytimer for July 16, 1999 (Reading Ex. 54 at 4)]

260. While the Adams / Telemundo settlement discussions were, ultimately, fruitless, Adams’ interest in obtaining a settlement payment

based on an appraisal of WTVE supports the inference that Adams filed its application for purposes of obtaining a settlement payment.

- c. **Adams was formed for the purpose of filing a comparative renewal challenge almost immediately after its principals received large payments in settlement of their prior comparative renewal challenge of Video 44.**

261. In addition to Adams' less than credible account of its reasons for filing its application and the evidence that Adams did not file the application with a bona fide intent to own and operate Channel 51, Adams' abusive intent is further demonstrated by the fact that it was formed for the purpose of filing a comparative renewal challenge almost immediately after its principals received a "huge sum of money" from settling the Video 44 comparative renewal challenge. See Garden State, 996 F.2d at 391 and 7 FCC Rcd at ¶ 25.

262. Monroe was an Illinois corporation created in 1982 for the purpose of challenging the license renewal of Video 44, WSNS-TV, in Chicago, Illinois ("Video 44"). [Joint Request for Approval of Settlement Agreement (Reading Ex. 19); Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22); November 22, 1999 Declaration of Howard Gilbert ("Gilbert Decl), ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 2516:16-18] With the exception of Elinor Woron, all of the principals of Adams were also principals of Monroe. [Gilbert Testimony, Tr. 996:18-23]

263. The primary purpose of the Monroe application was to challenge the use of Channel 44 as a subscription television station. [Gilbert Decl., ¶ 2 (Reading Ex. 24); Gilbert Testimony, Tr. 1112:14-20, 1116:15-18, 1117:10-13] Monroe was represented in the Video 44 challenge by B&C. [Monroe/Bechtel & Cole Fee Arrangement Letter (Reading Ex. 20)]

264. The Commission granted Monroe's competing application in October 1990 and denied Video 44's motion for reconsideration in August 1991. [See Harriscope of Chicago, Inc., 5 FCC Rcd 6383 (1990), recon. denied, 6 FCC Rcd 4948 (1991). At the time, WSNS-TV was worth in excess of \$50 million. [Gilbert Testimony, Tr. 1130:22-1131:2] Monroe, however, never constructed or operated the station. [Gilbert Testimony, Tr. 2516:24-2517:7] Instead, Monroe agreed to dismiss its application in exchange for payments exceeding \$17 Million. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 5 (Reading Ex. 19 at 12-13); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2)] That settlement was approved by the Commission by Order, FCC 92I-097 (released December 24, 1992). [Order, FCC 92I-097 (released December 24, 1992) (Reading Ex. 22)] Monroe, thereafter, received the \$17+ million payment in two installments in the first half of 1993. [Joint Request for Approval of Settlement Agreement, Attachment 1, ¶ 6 (Reading Ex. 19 at 13-14); Order, FCC 92I-097 (released December 24, 1992), ¶ 3 (Reading Ex. 22 at 2); Harriscope of Chicago, Inc., 8 FCC Rcd 2753 (1993)] Monroe paid a substantial bonus to B&C based on the



“highly successful” outcome of the Video 44 proceeding. [Gilbert Testimony, Tr. 1014:13-14, 1015:11-16, 1115:3- 1116:3]

265. At approximately the same time that Monroe was settling the Video 44 challenge for a "huge sum of money", its principals became concerned with “home shopping” programming. [Gilbert Testimony, Tr. 1007:3-4, 1114:2-9] Thus, in or around mid-1993, almost immediately after receiving the second Video 44 settlement payment, the Monroe principals decided to pursue a comparative renewal challenge to a television station broadcasting “home shopping” programming. [Gilbert Testimony, Tr. 2473:15-2474:7] Adams was formed for the purpose of challenging the renewal of television stations airing home shopping programming. [Gilbert Decl., ¶ 7 (Reading Ex. 24)] Adams’ instant application is a direct result of the Monroe principals’ decision, contemporaneously with receipt of the Video 44 settlement payments, to pursue a second comparative renewal challenge.

### 3. Conclusion.

266. In Garden State, the Commission found two factors to be “especially probative” as indications that the challenger had not filed with the intention of acquiring, owning, and operating the television station at issue: first, the Commission found that the challenging applicant’s stated reason for filing its application “was at best without credibility and at worst false and misleading,” and, second, the remaining evidence of the challenging

applicant's purpose did not demonstrate a primary interest in owning the television station. Garden State, 996 F.2d at 391; WWOR-TV, 7 FCC Rcd at ¶ 25. "As additional evidence of intent, the FCC relied on the fact that [the principals of the challenging applicant] formed [the challenging applicant] almost immediately after they received large payments from [a prior comparative renewal challenge] settlement." Id.

267. As in Garden State, Adams' stated reason for filing its application here is, at best, without credibility and, at worst, false and misleading. Likewise, the remaining evidence of Adams' intent does not demonstrate a primary interest in owning Channel 51 in Reading, Pennsylvania. Finally, like the Garden State challenger, Adams was formed for the purpose of filing a comparative renewal challenge almost immediately after its principals received large payments in settlement of their prior comparative renewal challenge of Video 44. Accordingly, as in Garden State,

the challenger's -- Adams' -- comparative renewal application must be denied as an abuse of process.

Respectfully submitted,

READING BROADCASTING, INC.

By: Thomas J. Hutton

Thomas J. Hutton  
C. Dennis Southard, IV  
Its Attorneys

HOLLAND & KNIGHT LLP  
2100 Pennsylvania Ave., N.W., Ste. 400  
Washington, DC 20037  
(202) 955-3000

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## CERTIFICATE OF SERVICE

I, Myra F. Powe, a secretary in the law firm of Holland & Knight, LLP, do hereby certify that on October 2, 2000, a copy of the foregoing PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW OF READING BROADCASTING, INC. was delivered by hand to the following:

The Hon. Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

James Shook, Esq.  
Mass Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Gene A. Bechtel, Esq.  
Henry F. Cole, Esq.  
Bechtel & Cole, Chartered  
1901 L Street, N.W.  
Suite 250  
Washington, D.C. 20036  
Counsel for Adams Communications Corporation

  
Myra F. Powe